



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: DynaLantic Corp.

File: B-234035

Date: May 3, 1989

DIGEST

Competition was not conducted on a common basis, and the resulting award was improper, where the contracting agency requested revised best and final offers (BAFOs) limited to revisions in price and delivery schedule, but made award on the basis of a revised BAFO that included significant changes in technical, management and logistics support approach.

DECISION

DynaLantic Corp. protests the Department of the Army's award of a contract to MicroSim Inc. under request for proposals (RFP) No. DAAJ09-87-R-1222, for helicopter flight trainers. DynaLantic contends that the Army improperly accepted MicroSim's proposal for award, since it did not conform to the established ground rules for the procurement.

We sustain the protest.

The solicitation, set aside for small business concerns, requested proposals to develop and fabricate helicopter cockpit and emergency procedures trainers for the UH-60A helicopter; it specified that award would be made to the responsible offeror submitting the low offer evaluated as adequate in three areas: technical merit, management, and logistics. Six offerors responded to the RFP; all were found to have submitted acceptable proposals. After requesting and evaluating best and final offers (BAFOs), the Army made award to the low bidder, Creativision, Inc. DynaLantic offered the second low price of \$3,149,686, while MicroSim submitted the high offer of \$4,821,837.

When Creativision subsequently failed to perform, the Army terminated its contract for default. To minimize delays in the repurchase of the equipment, which the Army deemed critical to the training of its helicopter flight personnel, the contracting activity did not resolicit the requirement,

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but instead requested an additional round of BAFOs from the five unsuccessful offerors for the original contract award. Although the previously proposed offered prices had been disclosed, the contracting officer requested each of the remaining offerors to submit a revised "best and final price and delivery schedule" for the procurement, but also advised that contract "negotiations have been concluded."

MicroSim submitted the revised low price of \$2,497,428 and enclosed a summary of what it characterizes as six major changes to its original proposal allowing for the substantial reduction of \$2,324,409 in price from its prior offer; DynaLantic reduced its price to \$2,699,121, or \$450,565 less than its initial offer. Agency technical personnel then reviewed MicroSim's revised BAFO to determine whether the identified proposal changes reflected an alteration in MicroSim's original technical approach; they concluded that the changes--which included a new, more advanced computer, replacement of MicroSim trainers with trainers utilizing different technologies, and fabricated by a subcontractor, and a change in logistics support--did not represent a change from MicroSim's original technical design and approach. The contracting officer concluded that MicroSim essentially had only revised its price and delivery schedule, in compliance with the BAFO rules, and thus made award to that firm. DynaLantic thereupon filed this protest with our Office.

DynaLantic disputes the Army's characterization of MicroSim's proposed changes as insignificant, maintaining that they in fact constituted major technical revisions which allowed for a substantial reduction in price. DynaLantic places particular emphasis on two of the six proposed changes: the substitution of a faster, more efficient computer, and transfer of responsibility for fabrication of the trainer cockpit to a subcontractor. DynaLantic maintains that these changes bear on the three evaluation factors (technical merit, management and logistics), and that, had it been afforded the same opportunity to update its technical proposal when preparing its revised BAFO, it likely would have been able to lower its offered price sufficiently to be in line for award.

It is a fundamental principle of federal procurement that a contracting agency must treat offerors equally, and that they must be furnished with identical statements of the agency's requirements in order to provide a common basis for the preparation and submission of competitive proposals. CompuTek Inc., et al., 54 Comp. Gen. 1080 (1975), 75-1 CPD ¶ 384. When an agency's needs change so that a material discrepancy is created between the RFP's ground rules and

the agency's actual needs, the RFP should be amended and all eligible offerors be given an opportunity to revise their proposals accordingly, Union Carbide Corp., 55 Comp. Gen. 802 (1976), 76-1 CPD ¶ 134; where an agency's failure to adhere to a ground rule would prejudice one or more offerors, the agency may not properly ignore the rule. Emerson Electric Co., B-213382, Feb. 23, 1984, 84-1 CPD ¶ 233. We find that the Army failed to treat offerors equally here.

As indicated above, the Army specifically requested updated prices and delivery schedules from each of the remaining offerors. While this request for revised BAFOs did not expressly preclude revisions to an offeror's technical approach, the record establishes that the Army intended that this request be limited to the opportunity to update prices and delivery terms, that contracting officials conveyed this intent to DynaLantic and presumably to all other offerors, and that both DynaLantic and MicroSim prepared their respective revised BAFOs with the understanding that this request was limited in scope.^{1/} In this regard, DynaLantic noted that "in accordance with the instructions" from agency personnel, its revised BAFO consisted "solely of [its] Best and Final pricing and delivery schedule"; MicroSim, in its revised BAFO, described its proposed changes as not affecting its original technical approach or development philosophy; and the Army scrutinized MicroSim's updated offer to ensure that it did not contain technical revisions. Statements made at the informal conference held in connection with this protest confirm that the Army, DynaLantic, and MicroSim each understood that the request for revised BAFOs permitted offerors to update only their prices and delivery schedules; changes to technical approach were neither contemplated nor allowed.

^{1/} While changes to technical proposals generally are permitted in BAFOs, see SETAC, Inc., 62 Comp. Gen. 577, (1983), 83-2 CPD ¶ 121, agencies in conducting procurements may use any terms and acquisition method deemed appropriate for the repurchase, provided that competition is obtained to the maximum extent practicable and the repurchase is at as reasonable a price as practicable. See United States Pollution, Inc., B-225372, Jan. 29, 1987, 87-1 CPD ¶ 96.


Thus, unlike the situation where vendors were free to submit technical changes in their BAFOs, see e.g., Systems Group Associates, Inc., B-198889, May 6, 1981, 81-1 CPD ¶ 349, the situation here clearly is one where all parties understood that technical revisions were not permissible. This being so, the sole question before our Office is whether the ground rules established for the reprocurement of the helicopter flight trainers were followed by all concerned parties such that the reprocurement was conducted on a fair and equal basis.

MicroSim included in its revised BAFO a list of six changes which it stated allowed for the dramatic, 48 percent reduction in its original price. At least three of the identified changes appear to have represented substantive changes to MicroSim's technical approach, management structure and logistics plan, significantly contributing to MicroSim's reduction in price. First, MicroSim itself acknowledged that its revised BAFO contained two significant hardware changes from its original offer. According to MicroSim, its substitution of one computer for another resulted in "increased performance at a lower purchase price." Second, MicroSim explained that its modifications in the trainer control system and overall exterior design, which were directly attributable to the transfer of the trainer fabrication effort to a subcontractor, enhanced ease of access to the unit's electronics and cabling system and reduced MicroSim's labor and material costs. The transfer of the fabrication effort to a subcontractor also obviously affected MicroSim's management structure and perhaps also the provision of logistics support for the subcontractor equipment. Finally, MicroSim's proposed transfer of the primary responsibility for certain unscheduled maintenance from its own maintenance personnel to Army technicians clearly affected its logistics support plan, and led MicroSim to predict a substantial reduction in cost and required manpower.

In view of the magnitude of the reduction in MicroSim's price, the firm's acknowledgment in its revised BAFO that the proposal changes significantly contributed to the price reduction, and the fact that the changes affected the choice of computer and the basic manufacturing and logistics support structure, we find that MicroSim's proposal incorporated significant technical changes, contrary to the ground rules established for the submission of revised BAFOs. At the same time, the other offerors reasonably followed these instructions and thus, unlike MicroSim, were unable to restructure their proposals or take advantage of advances in technology in an attempt to reduce their prices in what clearly was going to be a price competition.

We therefore sustain the protest on the ground that the Army failed to assure that offerors were competing on an equal basis, and that this failure clearly could have affected the outcome of the competition. Accordingly, by letter to the Secretary of the Army, we are recommending that a third round of BAFOs be solicited on the basis of amended procedures allowing for revisions in technical proposals. If MicroSim is not the successful offeror based on evaluation of the updated offers, MicroSim's contract should be terminated for the convenience of the government, and award made to the low priced, technically acceptable offeror. We also find that DynaLantic is entitled to be reimbursed its protest costs, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1988).2/

The protest is sustained.


for Comptroller General
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2/ DynaLantic also has questioned MicroSim's eligibility as a manufacturer under the Walsh-Healey Act, and the firm's intention to perform at least 50 percent of the work (as required where, as here, a procurement is set aside for small business concerns. 15 U.S.C. § 644(o) (Supp. IV 1986)). The Department of Labor currently is reviewing MicroSim's compliance with the Walsh-Healey Act, and the Small Business Administration has determined that MicroSim will be performing at least 50 percent of the contract.